

ENGENDERING CITIZENSHIP AND LABOR MARKET REGULATION - INTERNATIONAL AND CANADIAN PERSPECTIVES

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“The advancement of women and the achievement of equality between men and women are a matter of human rights and a condition for social justice and should not be seen in isolation as a women’s issue. They are the only way to build a sustainable, just and developed society. Empowerment of women and equality between women and men are prerequisites for achieving political, social, economic, cultural and environmental security among peoples.” *Beijing Declaration*

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Abbreviations

CEDAW	Committee on the Elimination of Discrimination Against Women
CIDA	Canadian International Development Agency
ICFTU	International Confederation of Free Trade Unions
ICECSR	International Covenant on Economic, Cultural and Social Rights
ICCPR	International Covenant on Civil and Political Rights
IDA	International Development Association
IFI	International Financial Institutions
ILO	International Labour Organization
NGO	Non-Government Organization
OECD	Organisation for Economic Cooperation and Development
PRSP	Poverty Reduction Strategy Papers
PRSC	Poverty Reduction Strategy Credits
UN	United Nations

Executive Summary

On a daily basis, the world's women are denied one of the most basic human rights –the right to non-discriminatory work and income. If women obtain paid work, they are segregated in job ghettos with inferior conditions, denied access to higher paying male work and paid much less than men for their work. Women migrants are exploited and trafficking in the labor of women and girls is increasing. These systemic violations of women's rights continue to occur despite years of commitments to end inequalities. This paper examines the world-wide gendered patterns of labor market inequalities which underlie women's impoverishment including the increasing "feminization" of work with the shift to the informal economy where women are clustered. It also considers various measures to realize women's human rights. Using a lens which focusses on the equal rights owed to women as citizens and migrating workers, the paper frames the engendering of the labor market as a broad political, social, legal and economic issue which requires priority attention and leadership from governments, unions and businesses in partnership with women and their representatives. Country-led, country-specific and proactive strategies are required to change the practices that contribute to women's economic inequality. This requires finding the right combination of transformative laws and policies together with the appropriate enabling institutions and enforcement measures needed to tackle this multi-dimensional problem. Implementing these strategies will be critical to women and their families achieving the benefits and minimizing the negatives of the new globalized world.

The paper provides both a systemic overview and practical guidance to those looking for policy alternatives or to strengthen existing equality measures. This includes legislators, policy makers, judges, lawyers, public officials, development practitioners, unions, business leaders, NGOs and interested citizens. The Paper starts with an introduction reviewing the interrelationship between gender, citizenship rights and development. Part 1 of the Paper examines the gendered nature of the labor force world-wide and the economic trends affecting labor market regulation drawing from the experience in the Transition countries and India. Part 2 outlines the role of international and national mechanisms in engendering the labor market including the role of governments, trade unions, employers and women's NGOs and at the international level, the role of international instruments and financial, trade and development bodies. Part 3 reviews the issues and considerations involved in developing transformative laws and institutions and the principles which should guide the development of those measures. Part 4 concludes by making recommendations and identifying some issues for further consideration. Annex 1 highlights the lessons learned from the strengths and weakness of the Canadian experience in developing labor market laws and institutions led by women's NGOs and unions. Annex 2 sets out a Canadian legislative checklist for designing a pay equity law based on international and domestic human rights requirements.

Key recommendations include consideration of the following: enacting labor market laws to implement international equality obligations; ensuring governments working with civil society take the leading role in developing national equality plans and gender data bases and establishing laws and institutions to provide women with equality of rights and equal access to labor force opportunities; extending labor market regulation to the informal economy where women most often work; strengthening the role of democratic unions and enabling collective representation; establishing minimum wage laws; establishing appropriate and enforceable pay equity laws to require women's jobs to be paid on a comparable basis as men's and employment equity laws to facilitate women gaining access to men's work; establishing special measures to improve women's informal economy income including sectoral bargaining or wages and protection of migrant workers; ensuring active participation of and dialogue between public and private sector institutions, including government agencies, employers, unions and women's NGOs and finally, capacity building all these institutions to ensure each is able to fulfil their equality-seeking role.

Introduction - Labor Markets, Citizenship and the Rights of Migrating Workers

Labor markets are central to the welfare of a country's workers and yet they operate to provide vastly different and inferior benefits to women than men. Women encounter systemic gender discrimination in all aspects of the labor exchange: this ranges from whether they have paid work at all, the type of work they obtain or are excluded from; the availability of employment supports like child care; their compensation, benefits and conditions of work; their access to "male" work; the insecurity of their jobs; their lack of any or equitable post-employment pension entitlements; and not having the time, resources or information to enforce their rights. While the nature and degree of this discrimination and social exclusion varies both within and between countries, the patterns are universal and lie at the heart of the world-wide poverty facing women and their families. Despite the modern nation state's promise of equal rights for all citizens - women are denied the right to participate in the economy on an equal basis with men. With the 1995 Beijing Declaration and Platform for Action, world governments, institutions and NGOs were called on to implement and participate in national action programmes to ensure women's full economic rights both as citizens and as migrant workers.

Although some countries have made significant strides towards women's economic equality, for all countries labor force gender equality remains a distant goal. The United Nations' Report, *World's Women 2000:Trends and Statistics* documents both the gains made and the persistent and systemic gender disparities which continue to exist between the lives of men and women.

Labor market regulation is a critical lever of public policy to be used by a country to provide its women workers with the right to function equally with men. Addressing labor force equality as a citizenship right and as a right of migratory workers highlights a number of inter-related factors which must guide reforms: It places the focus on the obligation of the state to ensure its laws and institutions provide those women in its country with the same economic opportunities and benefits as men; recognizes that citizenship and labor rights are multifaceted and inter-related and underscores the political and economic significance of women's unequal status in a world where some women have no direct relationship to the state because of kin-based male-dominated social structures and others are subjected to inhumane practices such as trafficking and abduction which deprive them of their original citizenship rights. (Joseph, 2000) With many businesses relying on exploiting cheap female labor and many men refusing to give up their privileged position, changing women's labor market status engages a very heated debate and can expose women to family, civil or state violence. Viewing equality as a right of citizenship is also an empowering approach which recognizes the leading role of women in the reform process. Women and their organizations working with unions and other NGO organizations are mobilizing for transformative legal and economic changes. Fundamental to this transformation is an understanding that achieving women's equality is not a women's issue but a local, national and international issue of the highest priority for ensuring sustainable development.

The right to a labor market free of gender discrimination is both a fundamental human right and a necessary development requirement. Labor markets without appropriate social safeguards will not lead to equitable economic growth (World Bank, 2002). There is a growing recognition of the long term positive benefits of "equitable" workplaces as opposed to any perceived short term advantage of undercutting a competitor. (Betcherman et al, 2002). Recent social protection strategies have focussed on "labor" issues and the importance of the ILO's core labour standards which require equal opportunity measures and promote collective representation. (ILO, 2002) Given that a poor woman's main asset is her labor, taking steps toward labor market equality and inclusiveness reduces the risks faced by the poor and is a key poverty reduction strategy.

Part 1. The Gendered Labor Market

It is essential to understand where and under what conditions men and women work and live in a country in order to design effective equality-seeking laws and institutions.(Cornish and Faraday, 1999) While the precise gendered nature of the market depends on the country, there are a number of key trends and many flow from the new economy. Women's economic opportunities are the product of many complex and inter-related political, economic and social forces. Globalization is fundamentally transforming the structure of countries' economies, labor markets, living standards and prevailing gender order. The increasing reliance of the world on the informal economy and migrant workers has further "feminized" labor markets with the shift from the male model of so-called "standard" employment to the female model of "precarious" informal employment. Globalization brings with it significant opportunities for developing countries to prosper but at the same time brings many risks and these risks fall disproportionately on women who are the poorest of the world's poor. The structure and conditions of employment for both men and women are now often in a constant state of flux, both positive and negative, creating economic uncertainty. (ICFTU, 1999 and Armstrong, 1996)

Regardless of where a woman lives in the world, she faces systemic gender discrimination in gaining access to and participating in the labor force as a result of stereotypes or culturally-based expectations about the roles and behaviours of men and women. Fundamental to this discrimination is the double burden of struggling to reconcile work with household and caring responsibilities for children and family members. This discrimination is also reinforced by the discrimination a woman faces in other areas of her life such as education, health, exposure to violence and the further layers of disadvantage women experiences as a result of their poverty, race or ethnicity, disability, culture or language. Many of the world's most exploited migrating workers are women who are refugees and displaced or trafficked workers. Many are victims of racism, xenophobia and related intolerance which create further unequal economic conditions. (UN,2000, ILO, 2002, Durban Declaration, 2001 and Armstrong and Cornish, 1997)

Gender Differences in the Pattern and Status of Employment

Women's labor force participation is increasing with women representing one third of the world's labor force except for northern Africa and western Asia. The increase comes primarily in the informal economy through self-employment, part-time employment and home-based low income work. (UN, 2000) Micro- and small enterprises are creating increasing numbers of jobs for women. The increasing growth overall in "non-standard" or precarious work is leading to greater job insecurity, lack of statutory protections and recognition and lower wages and lack of benefits. (ILO, 2002). While both men and women are moving to the informal economy, women together with other disadvantaged workers, such as racial and ethnic minorities, and the disabled usually still predominate in that sector, depending on the economy. So-called male "standard" jobs with full time income, statutory protections and benefits, located at an employer's premises, have never reflected female work as most women have been excluded from this work. While men, even poor men, usually hold a more privileged position relative to poor women, that advantage is narrowing as the "new economy" harmonizes down and eliminates many of the more secure, well-paying jobs previously held by men. (UN, 2000, Armstrong, 1996 and Vosko, 2003) Informal economy in this paper refers to the expanding and increasingly diverse group of workers and enterprises in rural and urban areas who receive no or little social protection and are highly vulnerable (ILO,

2002).

Now most new jobs are “precarious” which refers to a very diverse group of workers and companies in rural and urban areas ranging from own-account workers in survival type work to the self-employed in micro enterprises operating on their own or with contributing family workers. Self-employed and contributing family workers are increasing worldwide with women more likely to be the more vulnerable contributing family workers or “own account” workers and men the employers. (ILO, 2002 and Jain, 2002). Women's access to self-employment is hindered by the barriers women face in holding land and capital. For example, in the FSU countries, men were the overwhelming beneficiaries of the privatization of state assets and this exacerbated the already existing differential access of men and women to credit.(Paci, 2002). In addition, practices such as the trafficking in women and young girls and the smuggling of migrants has created a further class of “precarious” workers. (Durban Declaration, 2001)

This increasing “feminization” of work comes at the same time as there are increasing reproductive, family and household demands on women, with more women working in their reproductive years. Women suffer from “time poverty” working many more hours than men at their paid and unpaid jobs (UN, 2000 and Hochschild, 1997).The weekly workload for women in Eastern Europe and Central Asia is close to 70 hours. While the pre-transition Soviet state assumed many parenting responsibilities, the new market economy returned these responsibilities back to women with the ending of state child care supports. (Paci, 2002). In India, privatization of public utilities including water increased the burdens on women. (Jain, 2002). Precarious employment cannot be seen as a “free” choice in the context of these unequal relations of social reproduction. (Vosko, 2003)

Gender-Based Job Segregation and Income Inequalities

As noted above, the occupational segregation of men and women by gender is a worldwide phenomenon with men dominating higher paying “production” jobs and women dominating lower paying “caregiving” jobs. This job segregation, stereotyping and undervaluation of women's work underpins the world-wide gender order with men's work considered superior economically, socially and legally. Women are also denied access to men's jobs as a result of the different human capital they bring to the labor market. Of the 900 million illiterate people world-wide, women outnumber men two to one. This segregation and social exclusion is further reinforced by racism and xenophobia and related intolerance. (UN, 2000 and Armstrong and Cornish, 1997)

While the differential between men's and women's earnings has narrowed in many countries, women continue to receive substantially less pay than men. For example, in manufacturing, in 27 of 39 countries with available data, women's wages were 20-50 per cent less than those of men. (UN, 2000). The gender wage gap is affected by many factors including changes in the overall wage structure, labor market skills and productivity and gender-specific factors such as remuneration of skills. The unexplained part of the wage gap is generally attributed to two discrimination-related factors: the segregation of women into lower paying jobs, the barriers facing women accessing higher paid male work and the systematic undervaluation of women's work. (Armstrong and Cornish, 1997) Racism and other intolerance further reduces the wages of women. Although in Russia and the Ukraine the pay gaps in average men and women's earnings have increased over the last decade, overall the wage gap in Transition countries still fares well

internationally. This is probably attributable to the relatively good position of women in countries which formerly had state wage-setting, the minimum wage policies in some countries and the high degree of discrimination in other countries. (Durban Declaration, 2001 and Paci, 2002)

The above-noted gendered trends in the structure of women's income opportunities have consequences for devising and delivering strategies to achieve labor market gender equality. For example, many regulatory and data collection frameworks are still based on an outdated model of male "standard" employment with the result that the areas of work where women predominate are not protected. As well, the occupational segregation of women's work can result in a situation where, even if a law applies, women are denied a remedy as in India where most women can't access the restrictive pay equity law which only allows comparisons between men and women's work where they perform the same job. Having mapped out the multi-faceted factors that create and contribute to women's labor market inequality, it is necessary to consider what mechanisms are available to transform that inequality.

Part 2. Engendering Labor Market Regulation

Regulatory Mechanisms

Engendering the rules governing women's labor force participation requires an understanding of the different mechanisms which function at the international, national and local levels to set the overall framework of rights, obligations and practices in the labor market. These include formal and informal interventions as well as market-based mechanisms. Along with direct state interventions, the labor market is also regulated by collective voice representation and market mechanisms. The mix between state and market mechanisms varies from country to country. A country's culture affects its approach with civil law countries emphasizing regulation more than common law countries. The American approach relies more on the market and the Canadian and European approach focuses more on laws including those enabling collective voice representation. Some argue that the "market" is "unregulated", yet deferring to individual contracts and self-regulation is really a policy choice (OECD, 1999 a). While developing countries often have an interventionist labor policy, the reality is that the "market" is left to do any "regulating" as a result of weak institutional support and economic structure. (Betcherman et al, 2002)

The Role of the Nation State and the Market

The state plays the central role in labor market regulation by ratifying international instruments and establishing effective laws and institutions to translate those obligations into justice mechanisms women can enforce. Given the power of employers and the "immediacy of employment and profits", the issue of whether and how to regulate the labor market is very controversial. There are generally two opposing public policy views: the "institutionalist" view sees collective bargaining, minimum wages, anti-discrimination laws and job security provisions as essential social protection for workers and the means for increasing equitable economic growth and moderating economic declines. The "distortionist" view sees the welfare state as "obsolete" and such regulations as interfering with economic growth, discouraging hiring and favouring "regular" workers. (Betcherman et al,2002)

In the context of promoting gender equality, the issue is what approach produces the most favourable outcomes in reducing discrimination. Using this test, the answer is clear. It is precisely because the market in general and employers in particular have not provided decent and equitable jobs and wages that women have demanded state intervention to protect them. Yet, world-wide moves to deregulate labor and business markets which are often combined with moves to dismantle state institutions and privatize state functions and assets are increasing the inequality facing women who often look to such laws and institutions to protect them from labor market inequalities. While corrupt and inequitable state practices can also increase women's inequality, the degree of gender discrimination permeating the labor markets and the widespread violation of women's fundamental human rights, requires more rather than less government intervention. Direction and enforcement from state laws and institutions which are free of corruption and gender-sensitive is necessary in order to establish equitable rules for women's employment and even with that, enforcement is a continuing struggle. (Betcherman et al, 2002, ICFTU, 2002 and Armstrong and Cornish, 1997).

Role of International and Regional Mechanisms

...International Instruments...

A number of international instruments include measures aimed at promoting labor market gender equality. These instruments guarantee specific rights, define state responsibilities and create mechanisms to monitor compliance and allow redress. They provide concrete and practical direction on how to implement governments' proactive obligations to adopt all necessary measures to achieve progressively the full realization of women's economic rights. These instruments include the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) and the 1995 Beijing Declaration and Platform for Action and the June, 2000 Beijing+5 "Outcome document". The United Nations Commission on the Status of Women is mandated by the United Nations to play a central role in monitoring the implementation of the Beijing documents and advising the Economic and Social Council accordingly. CEDAW is monitored by the UN Committee on the Elimination of Discrimination against Women. In addition, the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Political and Economic Rights and the International Convention on Elimination of all forms of Racial Discrimination include important protections.

Key rights are also contained in the ILO Conventions including Convention 100 on Equal Remuneration. The 1998 ILO Declaration on Fundamental Principles and Rights at Work contains the ILO Core Labour Standards which are a set of four internationally recognized basic workplace rights and principles which include along with the right to equal opportunity and non-discrimination in employment, the elimination of forced labor, child labor and freedom of association and the right to collective bargaining. These standards are considered to be binding on ILO member countries even if not specifically ratified as they are considered to be fundamental economic rights regardless of the level of development. (Cornish and Verma, 2002) The right to economic equality internationally is not limited to those who are "citizens". States also owe a duty to protect non-citizens under the International Convention on Protection of the Rights of all Migrants Workers and their Family.

...Trade Agreements, IFIs and Transnational Corporations...

National markets are significantly affected by forces and laws outside the country, including international or regional trade arrangements, the requirements of international financial institutions and transnational corporate business practices. Trade liberalization policies often tend to define social and economic regulation as “trade barriers”. These forces are limiting the ability of individual states to exercise control over their labor market policies. Structural adjustment policies often shift the burden of responsibility to women to make up for government social spending cuts. Trade agreements negotiated at the transnational level have a profound impact on public policy making it more difficult for citizens, and particularly women to democratically control their lives. The negotiation of trade agreements have been widely criticized for the lack of substantive labor and social protections as well as the lack of transparency (Cornish and Verma, 2002). Women's NGOs and unions are lobbying organizations such as the World Bank and the World Trade Organization to take steps to ensure that financing, development and trade practices promote gender equality rather than inequality. The current move to include “services” in trade agreements, a sector where women are clustered will also have equality implications. The World Bank has enacted policies to integrate gender into its work and has taken significant steps but the progress is slow given the required time, resources and commitment needed from client countries. (World Bank, 2002). Progress is even slower on the trade front. (ICFTU, 1999)

Part 3 Transforming Labor Market Laws and Institutions - Issues and Considerations

This part of the paper reviews the issues involved in developing transformative labor market laws and institutions and the principles which should guide the developments of those measures. These issues and principles include ensuring a participatory role for collective voice to enhance the accountability and the effectiveness of equality strategies; gathering gender-related data; enhancing institutional capacity to develop equality strategies and measure their effectiveness ; identifying key broad substantive areas in which action is needed; and developing proactive enforcement and dispute resolution mechanisms.

The Role of Collective Voice and Representation Laws

Research shows that a woman's most effective strategy to address labor market inequalities from hiring to pensions is to join a union of her choice which can give voice to her concerns and bargain collectively on her behalf. A recent World Bank study shows that workers in the new global economy in developing and industrial countries who belong to unions earn higher wages, have better benefits including pensions, work fewer hours, receive more training and have longer job tenure on average than their non-unionized counterparts. Unionization also reduces the wage differences between men and women. These are precisely the work conditions women need and don't have. (Aidt and Tzannatos, 2002 and Armstrong and Cornish, 1997)

Unions with democratic procedures can empower women to join together and work with other women and men and employers and governments. As part of civil society, unions lobby with women's and other NGOs for legal and policy reforms such as family-friendly social policies, job protection, pensions, social assistance and accessible health care. Given women's “time poverty”, union representation provides women with a time-saving way to resolve problems. While unions

can play a very positive role, many trade unions remain male-dominated and not free from discriminatory practices themselves. Other trade unions such as many in Mexico can be too closely affiliated to governments or employers to provide independent equitable representation to workers. As with other labor market institutions, unions need to be pushed to transform themselves as well to ensure that they can truly give voice to the issues affecting women. New forms of unions also need to be established. In India, SEWA, the Self-Employed Women's Association was founded in 1971 as a trade union movement for women in the informal sector. It continues to operate as a highly successful co-operative to empower poor self-employed women by providing them with access to credit and financial services and to reduce dependence on exploitative money lenders.

The central equality role of trade unions is enshrined in both ILO and international equality instruments which recognize that the achievement of gender equality is interconnected with the achievement of collective bargaining standards. Yet there is much state and business resistance to unions playing an effective role in protecting workers' rights and this has meant that collective bargaining protections ensuring independent unions must be continually struggled for. In addition, the financing and privatization strategies of international financial institutions have often failed to properly recognize the value of collective bargaining and have at times undermined workers' collective bargaining struggles (ICFTU, 2002). In recent years this approach has started to change. The World Bank has been moving since 1999 to establish and foster a consultative relationship with the world-wide trade union community through its representative, the International Confederation of Free Trade Unions with 156 million members in 148 countries. This has resulted in the Bank taking a number of important steps: supporting country compliance with the ILO's core labour standards including preparing a Tool kit to assist in the enforcement of the core labour standards; encouraging the incorporation of trade union perspectives in the development of Poverty Reduction Strategy Papers by IDA countries and releasing its recent report on the benefits of unionization. In turn, the ICFTU has welcomed these steps and has produced a detailed guide to the PRSP process for its affiliates in developing countries.

While there is a mix of private and public sector collective bargaining in the developed world, collective representation in other countries is focussed in the public sector and represents a much smaller proportion of the countries' workforce. World-wide, the number of unorganized workers is very high with union membership declining in the shift away from "standard" employment to the informal economy. (Betcherman et al., 2002) Given the benefits of unionization, this decline has serious consequences for women's equality. In any country with a large unorganized labor market such as India, there are many fewer opportunities for collective voice representation.

Empowering the Voice of Women and their Representatives

Transformative labor market reforms are those which empower women as partners and active agents in the reform process. While trade unions provide an important collective voice for women to promote equality measures, most women worldwide either have no access to a union or have not joined unions because they have been undemocratic or male-dominated. Women NGOs both at the local and national level have played and continue to play an indispensable role in advocating for reforms with local and national businesses and governments. This includes participating in the country PRSP process. Annex 1 of this paper summarizes the Canadian struggle for labor markets reforms and the important leadership provided by Canadian women

through their NGOs and unions.

Gender-Specific Information, Analysis and Planning

Every labor market law and policy will affect men and women differently because of their different circumstances. Without the necessary gender-related information and the capacity to carry out gender-based analysis to identify and accommodate the differences, labor market laws and institutions will continue to be dominated by the concerns of "male" work. For example, in the Transition countries, where gender data is limited and often out of date or unreliable, there is little gender analysis informing countries' policy-making processes. Critical information is missing about issues such as women's "time poverty" and the gender differentiation of employment in the many subsectors of the informal economy (Paci, 2002)

National gender-based analysis and planning contributes to a number of mutually reinforcing objectives: advancing women's equal participation with men as decision-makers in shaping the sustainable development of their societies; supporting women and girls in the realization of their full human rights; and reducing gender inequalities in access to and control over the resources and benefits of development. Such analysis also needs to be informed by the other areas of women's disadvantage, including factors such as race, ethnicity and disability. (Beijing Declaration and Platform, 1995, Durban, 2001 and CIDA, 1999). Finally, gender planning provides important information to support the policy choices that must be made in countries where there are competing priorities and inadequate resources.

Scope of Labor Market Employment Protections

Most countries in the world, whether they are industrialized or not focus their labor laws on male-dominated "standard" employment and often exclude from protection small workplaces, those doing part-time or contract work, home work and "own account" workers where many women and now more men work. (Betcherman et al, 2002). This is done through employment protection regulations which set the rules for hiring and firing, severance and notice. Some countries restrict the use by employers of "non-standard" workers, although the new economy is leading to an easing of these restrictions. Other countries including India uphold the "male" model of employment by passing laws which restrict women's access to night work, or other work perceived as "dangerous" in places such as mines. While some rules protecting "standard" employment do provide "regular" workers with more job security and the economy with more stable employment, they often limit the opportunities of women who will be either kept out of the workforce or kept in the informal economy.(OECD 1999 and Betcherman et al, 2002). As the forces of globalization seek to have a more "flexible" workforce, this often means that there is resistance to any increase in labor protections for informal workers. As well, although many host and receiving countries rely on migratory labor, regulatory laws and institutions have failed to protect such workers. Many developing countries rely on the foreign currency earned by its citizens who have migrated to other countries, many of whom are women domestic or service workers and the host countries have also come to rely on this important but mostly exploited segment of their workforce.

Absence of Effective Gender Equality Laws

While international instruments clearly require signatory countries to establish effective laws and

institutions to allow women to redress labor market violations, most countries do not have effective laws and the laws which are in place are often inaccessible to women who lack the resources to access the legal system. While some of the Transition countries who are looking to join the European Union are required to establish human rights mechanisms, many of the Central Asia Transition countries do not have such laws (Paci, 2002). Even where countries have laws in place, these laws are generally reactive, requiring women to file complaints. Given the systemic nature of labor market gender discrimination and the limited available resources, a complaint-based approach is generally ineffective and too slow to achieve significant equality results. It is for this reason that international instruments require states, employers and unions to take a proactive approach to redressing gender equality by identifying the systemic problems and developing systemic solutions.

An innovative proactive approach aimed at transforming South Africa's discriminatory labor markets can be seen in its 1998 *Employment Equity Act* which was developed after reviewing the Canadian experience with employment equity laws. This law requires employers to establish employment equity plans which take steps to eliminate unfair discrimination in any employment policy or practice which includes recruitment, job classification, remuneration, employment benefits and terms and conditions, promotion and dismissal. Employers must take affirmative action measures designed to ensure that suitably qualified women and other designated groups have equal employment opportunities and are equitably represented in all occupational groupings. While the law generally only applies to employers with over 50 employees, it does attempt to address a situation facing women in "precarious" employment by deeming the clients of a temporary employment service to be the employer where the job is of sufficient duration. India also has employment equity measures for dealing with the social exclusion of the "untouchables". (Jain, 2002). Such employment equity measures with appropriate training help to change workplace cultures (Cornish and Faraday, 1999).

Pay Equity Measures

Given women's substantial pay inequalities, engendering a country's pay setting mechanisms is essential. Wages and benefits can be set by laws (minimum wage and collective bargaining rules) institutions (union practices) or industrial or market practices. While controversial, there is research to support the use of minimum wage laws as a gender equality and poverty reduction measure since women are primarily found in the lowest pay ranges. Higher minimum wages have been shown to reduce the dispersion of earnings and incidence of low pay in developed countries (Betcherman et al 2002 and Armstrong and Cornish, 1997). While there has been concern that minimum wage laws may be less effective in developing countries as a result of limited coverage and lack of enforcement, recent research has shown that minimum wages do have an impact in the informal sectors (Lustig and McLeod, 1997).

Pay equity or equal pay for work of equal value is one of the world's earliest human rights gaining recognition in 1919 as one of the initial ILO standards. It is now enshrined in many international human rights instruments primarily ILO Convention 100. Pay equity laws and strategies tailored to the circumstances of women's work in each country help to identify and dismantle long-standing patterns of systemic compensation discrimination. Since the undervaluation of work associated with women is fundamental to women's low socio-economic status, pay equity strategies are an important way to establish the overall conditions for women's equality (Armstrong and Cornish,

1997). Yet effective enforcement of pay equity laws requires the strengthening of labor market enforcement mechanisms which in turn requires resources and political will.

Sexual harassment and Workplace Violence

Women face violence and harassment both in the home, in their communities and at their workplaces. This problem has its roots in many factors, including the outright hostility which exists in some countries towards women and also in power dynamics whereby men, employers and the state seek to control women. In India, redress on this issue started with a judge-made law, the 1997 landmark case of *Visakha v. Others* which established that sexual harassment was discrimination. This led the Government to define misconduct in its Industrial Standing Orders Act as including sexual harassment which was important for both symbolic and enforcement reasons. Committees were set up in organizations with representatives from NGO women's organizations with a senior women executive as a chairperson so women would not be intimidated (Jain, 2002). This was an important first step although effective enforcement requires stronger employment equity measures and strengthening of institutional capacity. .

Pension Benefits

Pensions providing long term benefits for old-age, disability and death is a labor market measure which is usually provided in the context of social protection or social security (ILO, 2000). Elder poverty is a major focus of poverty reduction efforts and women are a growing portion of the world's elderly. As pensions are a feature of the formal economy and particularly public sector employment in developing countries, the world-wide economic restructuring and shift to the informal economy is affecting pension entitlements. In India, 90% of workers have no formal pension provision (Jain, 2002). In the Transition countries, the shift to a pension system based on contributions and work histories affects women dramatically as it does not provide credit for the time spent in nurturing and caring activities during the so-called "non-productive" reproductive time which is disproportionately spent by women. Other factors are contributing to the poverty facing elderly women: women's lower wage earnings affect their pension entitlements; women live longer than men; age-old pensioners represent an increasing proportion of the population, divorce rates are increasing and there are more widows in conflict countries. It will be a continuing challenge to ensure adequate retirement income for women.

Proactive Enforcement and Dispute Resolution

Ensuring compliance with labor laws and contracts is a necessary requirement of any labor market regulatory framework in order to ensure women workers are actually protected. In addition to the problem of inadequate legal protections for women's equality rights, many countries have non-existent or ineffective enforcement mechanisms. For some countries, the laws on record appear to provide protections but are not enforced in practice due to lack of commitment or inadequate resources or capacity. A country's choice of an appropriate enforcement mechanism will depend on the nature of a country's compliance issues and the degree of trust which workers and their organizations have in the country's judicial institutions. Judicial reform measures will often be needed to establish a more credible, equitable and effective justice system. In many countries, standing up to a powerful employer can lead to immediate reprisals including death. Given the strong "political" dynamics of the labor market and the necessity to ensure the rule of law, a strong

and resourced sanctions and anti-reprisal policy must be enshrined in labor laws to protect workers and their organizations. This approach should co-exist with “softer” compliance approaches.

The cultures of some countries favour alternative dispute resolution methods. The Guatemala Judicial Reform Project has used community-based mediation centers which respect indigenous dispute resolution practices to address a variety of legal\social disputes, including labor issues. Studies show that compliance increases where employers and employees are involved in creating and implementing their own enterprise compliance plans to meet individual workplace or sectoral requirements (OECD, 1999a, ILO 2000 and Betcherman et al, 2002). ADR approaches are less costly, can be tailored to a country’s culture and can give more control to the workplace parties. Furthermore, given the uneven bargaining position of workers and employers, enforcement approaches which incorporate state investigations and quick, low-cost hearings by administrative labour tribunals in cases such as dismissals helps to balance the power of employers.

Part 4 Lessons Learned: Recommendations and Issues to Consider

Given the systemic discrimination facing women in the world's labor markets and the many contributing factors to women's economic inequality, a country's regulatory framework needs to be transformed in order to provide its women citizens and migrating workers with access to labor justice. This requires a number of inter-related steps all of which must be tailored to the specific needs of the country and its regulatory culture.

International Obligations

A country's international obligations must guide the transformation of a country's labor market regulatory framework. Flowing from the Beijing Documents, the ICECSR, the ICCPR. and the ILO Fundamental Declaration, Governments must establish laws and policies and develop institutions consistent with the following principles:

- systemic discrimination against women impoverishes women and society as a whole;
- governments, employers and civil society commit to the goal of transforming the regulation of labor markets to ensure women are afforded the same economic opportunities as men;
- governments have proactive obligations to “adopt all necessary measures” to “the maximum of its available resources” to eliminate discrimination against women by any person, organization or enterprise and “with a view to achieving progressively the full realization of the rights” recognized in international law. This must include:
 - enacting and strengthening legislation to achieve labor market equality;
 - creating competent and effective institutions to enforce equality rights;
 - enabling a strong equality role for trade unions and collective representation; and
 - actively monitoring and following up on these commitments.

Constitutional Protections

Entrenching the right to labour market equality for women in a country's constitution is one way to fight attempts by governments and employers to take away the rights of women workers

Defend the Equality Role of the State

While a variety of strategies are necessary, any equality strategy needs to make support of the public sector a central concern. Given the critical role of the state in protecting women from labor force inequities and providing women with essential services key to their survival, any moves to deregulate the public sector must be carefully analyzed for their gender impact.

Establish a National Gender Plan and Data Base

Establishing and maintaining labor justice for women requires a gender-sensitive planning and implementation process which mainstreams gender policy. As mandated by the Beijing Declaration, these national plans must include specific measures to reduce gender inequalities in the laws and institutions which influence women's economic opportunities including: labor force participation measures including activity rates, unemployment, share of total employment, pay gap, pension and benefits and access to economic opportunities. Such analysis should also incorporate a perspective based on women's multiple disadvantages including race, ethnicity and disability. This includes establishing a data base of dis-aggregated sex data for initially identifying and then monitoring the labor market to identify the gender impact of laws and policies and the narrowing or widening of gender differences in access to economic opportunities. The data collected will vary by country and will depend on the nature of the country's labor market and women's population. For IDA countries, the process of preparing and monitoring PRSPs and related Poverty Reduction Strategy Credits (PRSC) can be integrated with this planning process. These plans should be developed using a participatory consultative framework which incorporates civil society including women's organizations and trade unions. In addition, institutional capacity must be developed to evaluate that data, determine gender-responsive actions to correct problems, determine action priorities, set realistic targets, establish monitoring and accountability mechanisms and change priorities where appropriate.

Government Decision-Making and Resource Allocation

The decisions taken by state institutions in setting budget priorities likely have the most fundamental impact on women's equality. It is essential therefore to ensure that there is a gender-based analysis of these budgetary decisions and the programs that flow from these decisions and that there is the technical capacity in civil society to participate in government decision-making and resource allocation processes and put forward credible policy alternatives.

Enlarge Scope of Labor Market Employment Protections

With the data gathered on the conditions of both women's and men's work, the state can then move to enlarge the scope of labor market regulation to include protection for the work of all citizens and migrating workers. Protecting work in both the formal and informal economy requires a balance in order to provide sufficient protections to those in so-called male "standard" employment while ensuring the access of women to those jobs and higher levels of protection for precarious employment where women predominate. It is also necessary to ease restrictive protective laws to ensure women have access to all forms of work. Migrant workers, including women refugees, trafficked workers and smuggled immigrants, although not citizens, must receive appropriate protections and should not be subjected to substandard and inhumane conditions of

work..

Strengthening and Supporting the Role of Trade Unions and Collective Voice Representation

Given the resistance to unionization, the state must establish a strong and supportive legal and policy environment which encourages and protects collective bargaining rights and extends it innovatively to the areas where women work in the informal economy. This could include allowing unions to bargain for sectoral wages for those in “precarious” jobs, such as employment agency or household workers or to work together for access to credit where self-employed. Similarly, laws must require unions to represent women workers without discrimination and to ensure they are independent from government and business control. Consistent with the recommendation of the ILO Committee of Experts, labour and equality rights laws should be integrated so that unions and employers work together to ensure women’s labor rights are protected.

Strengthening and Supporting the Role of Women’s Voice

In addition to the role of trade unions as women’s voice, resources and energy must be directed towards assisting women to build their own organizations and enhance existing ones so that women themselves will play the most important role in identifying the problems and solutions for women’s economic inequality.

Core Labor Standards

Flowing from the 1998 ILO Fundamental Declaration, governments must foster compliance with the ILO Core Labor Standards incorporating them into enforceable sections of national laws and including them in trade agreements. Businesses can comply with such standards through including them in corporate codes of conduct with independent monitoring and compliance mechanisms. IFI's should devote time and resources to incorporating a gender equality strategy into all development projects and funding.

Pay Equity Measures

Measures to address gender-based pay inequalities require a multi-faceted approach tailored to a country's needs which can include: laws establishing minimum wages; promoting collective bargaining in the areas where women work; establishing pay equity laws to require women's jobs to be paid on a comparable basis as men's jobs; establishing employment equity or affirmative action laws to allow women to gain access to higher paying and higher valued men's jobs and finally special measures for improving the income received by women from the informal economy including sectoral wages. International human rights instruments combined with the experience implementing ILO Convention 100 leads to the following guiding principles for pay equity laws: Wage discrimination is systemic in nature. Traditional patterns of conduct must be transformed in order to achieve equality. Discrimination-free wages must be identified by the principle of “equal pay for work of equal value” which requires an objective gender-neutral evaluation of the different jobs that women and men jobs do. Following the Beijing *Platform for Action* and *Beijing+5*, public and private employers have an obligation to take proactive steps to implement equal pay for work of equal value and to review, analyse and reformulate wage structures for female-dominated jobs with a view to raising their status and earnings.

Human Rights and Employment Equity Laws

Laws should be enacted which provide proactive employment equity measures requiring employers in collaboration with employees and unions where they exist, to conduct a workforce analysis to identify under-representation of designated groups, review any employment systems, policies and practices in order to identify employment barriers against the designated groups; prepare a short- and long-term plans with measures to remove employment barriers; positive policies and practices, and reasonable accommodation; numerical goals and timetables for hiring and promotion, to correct under-representation. The plans should include prohibitions against sexual harassment and workplace violence and should be enforced through a human rights body.

Pensions

Strategies are needed to ensure women have access to pensions on equitable terms which recognize their different work histories, their precarious and migratory employment and their movement in and out of paid work.

Ensuring Effective Enforcement and Dispute Resolution Mechanisms

International human rights obligations provide that governments have an obligation to create effective enforcement mechanisms for domestic laws. The complexity of enforcement issues combined with the competing priorities for government resources and existing weak structures requires the development of new innovative enforcement approaches which set country-wide priorities for compliance issues. In developing countries, dispute resolution approaches need to take into account legal, institutional and cultural values. Effective enforcement requires that all human rights complainants have access to a body that can address complaints and that can provide an effective remedy and impose sanctions for non-compliance and wrongful reprisals if required. This can include administrative tribunals and state investigations. On-going monitoring, reporting and follow up within a defined time frame are necessary in order to ensure the practical implementation and realization of equality. Effective enforcement also requires providing access to legal aid for vulnerable persons seeking to enforce their rights. New compliance approaches should focus on providing technical assistance to workplace parties; development of enterprise-wide plans to improve work conditions; the use of alternative dispute resolution to provide fair and expeditious resolution; and involving social partners, partners trade unions and NGOs.

Other Measures

Tackling women's low income requires measures such as co-operatives in order to redress their unequal access to other economic resources, including land and capital which form the basis for access to credit. Educating girls and women is one of the fastest ways to open up the labor markets for women. Equity strategies must identify and address the gendered factors which contribute to women's poverty and inhibit labor force participation and equity in a particular country- including income opportunities, education, health, housing, life-expectancy as well as risk, vulnerability, powerlessness and inability to be heard.

Recognizing Women's Reproductive, Family and Household Responsibilities

It is essential that labor laws and policies recognize and accommodate women's reproductive, family and household responsibilities. Maternity leaves and benefits must be recognized as necessary features of a workplace where women work and actions are not taken to evade such responsibilities and avoid hiring women. Measures are also necessary to help facilitate family economic activity, including cottage industries and agricultural work as well as assistance in household activities such as reducing the time in fetching water.

Conclusions - Issues to Consider

Transforming labor market regulation to move towards gender equality is a complex process with many issues to consider. There is a pressing need to come to a better understanding of the effects of economic restructuring on gender equality. Why are women moving to the informal sector? Is it a way of reconciling the double burden or are they offered no choice? Are they moving to the informal economy from formal employment or from non-recognized employment or household work? What innovative legal measures are necessary to protect informal sector women workers from inequalities and exploitation? To what extent are the policies of the new economy increasing the "time poverty" of women by transferring to them responsibility for formerly publicly funded services? How can employers be persuaded that gender equality is good for business and the economy? Can the use of corporate codes of conduct including the core labour standards be expanded to protect women in the informal economy? What measures are necessary to address the growing exploitation of women migrating workers?

While equality promoting laws as set out above are an important first step, they are not sufficient. Progressive laws often coexist with growing inequalities in labor force participation, income and access to decent work because the laws are not enforced or supported. Public sector institutions need to be reformed and provided with adequate resources and infrastructure to support the application and enforcement of those labor laws and civil society organizations need to be built and assistance provided to them to engage with the state. In states where there are competing priorities and inadequate resources, gender planning and budgeting is necessary to identify the gender impacts and to establish a national plan to ensure reasonable progress is made towards gender equality. All of these strategies will help to establish the rule of law, empower workers, improve public sector institutions and contribute to equitable economic growth. Urgent action is needed to make real progress. Just as the world of work is being transformed by the drivers of the new globalized economy, so must the world's workplaces be transformed and engendered to be inclusive of the world's female workers. Given the similarity of world patterns of labor market inequalities and the globalization of state economies, both industrialized and developing countries can learn from each other about effective equity strategies.

Annex 1 Lesson Learned from the Canadian Experience

Canada is a country of contradictions when it comes to labor market equality measures. It has played a leading role world-wide in enacting proactive pay and employment equity laws. At the same time, Canada's actions stand in sharp contrast to its commitments. Canada has generally failed to effectively enforce these laws and its social and economic policies have contributed to an erosion of women's equality rights. Any improvements have been made as a result of the persistent efforts of women's NGOs and unions who continue to address violations of women's rights through a number of strategies including lobbying for legal reforms, litigating to establish court precedents, supporting the equality role of unions and collective bargaining, using international equality mechanisms to question Canadian rights violations, and defending the equality role of the state. Canada's move to establish equality measures started with the groundbreaking 1970 *Report of the Royal Commission on the Status of Women*. Effective in 1985, the *Canadian Charter of Rights and Freedoms* formally entrenched equality into section 15 of Canada's constitution.

Despite the progress made by Canada which ranks first on the UN list for the highest quality of life in the world, Canadian women and their families are falling farther behind rather than moving forward. Over the past two decades, Canadian women's poverty and therefore children's poverty has increased steadily. Almost 52% of families with children headed by sole support mothers were poor at the time of the Royal Commission report and that figure has increased to 56%. Canada's aboriginal peoples rank 63rd on the UN index. Human rights laws have not been effective in eliminating systemic racism with women of colour, immigrant women and refugee women underpaid and under-represented in Canadian society. Like these other groups, Canadian women with disabilities also face substantial barriers. (FAFIA, 2003) The same world-wide trends in women's labor market inequalities many flowing from the new economy can be found in Canada. More women are working in the labor force and throughout their reproductive years. The workforce is "feminizing" with a rise in "precarious" jobs and "harmonizing down" of standards. The wage gap between men and women is still high but decreasing. Some of this is likely attributed to the fall of male wages, particularly those who are racialized and young. The rise of "non-standard" jobs has been driven by an increase in temporary work and own account self-employment. (Vosko et al, 2003 and Armstrong, 1996).

Lobbying for Equality Laws

Canada's progressive equality laws were enacted at the federal and provincial\territorial levels only after many years of lobbying by civil society coalitions. Organizations such as Ontario's Equal Pay Coalition, a group of trade unions, church and community groups lobbied from 1976-1987 until finally getting the Ontario provincial government to pass the first Pay Equity Act covering the public and private sectors and requiring employers proactively to prepare pay equity plans to identify wage gaps by comparing men's and women's work using the criteria of skill, effort, responsibility and working conditions. Necessary wage adjustments to close the wage gap are then phased in at 1% of payroll each year. While employers argued that the "market" should be left to "self-regulate", the Coalition persuaded the Government that not many employers would voluntarily increase their labor costs. Laws which depended on individual complaints from vulnerable women had been proven ineffective. Wage discrimination was a systemic problem. Accordingly, Ontario's new law recognized that effective enforcement required a system of affirmative steps. The hallmark of this new proactive approach is the combining of a human rights and human resource planning process to carry out this significant workplace change more effectively and efficiently, allowing the parties to set priorities and meet legislated time frames and obligations. (Armstrong and Cornish, 1997 and Achieving Equality, 1992)

The Equal Pay Coalition was one of the first organizations where trade unions and community groups came together to lobby for change united by a desire to achieve gender pay equity. After obtaining the pay equity law, the Coalition still remains active in helping people to bring forward pay equity cases,

lobbying for amendments, and working to push the enforcement body, the Pay Equity Commission, to carry out its job effectively. Ontario's Alliance for Employment Equity was a similar organization which lobbied for and obtained an Ontario *Employment Equity Act* which was then repealed by a successor conservative government which argued it was reverse discrimination.

Litigation as an Access to Justice Strategy.

Canada's advances in human rights, labor and *Charter* jurisprudence have come primarily as a result of litigation brought by women's NGO's and unions. This started in the 1980's with the interventions of the Legal Education and Action Fund. LEAF's predecessor group had lobbied to ensure that Canada's constitution included an equality guarantee. LEAF organized women lawyers to intervene in *Charter* cases to ensure that section 15 was interpreted to promote women's substantive and not formal equality. This successful strategy resulted in many of the initial cases interpreting Canada's human rights and *Charter* provisions establishing important precedents consistent with Canada's international equality obligations. These have since guided workplace equality laws and rulings. Canadian legislation avoids any reference to "intention" and focusses on identifying whether the effect of practices is discriminatory even if such effect is unforeseen. The recent *B.C.G.S.E.U* case argued by LEAF and dealing with the test standards for women firefighters reinforced an employer's obligations to take positive steps to design workplace standards to reflect all members of society.(Cornish, Faraday and Verma, 2001) The Court also upheld the importance of employment equity measures in a case brought by a women's group in Montreal, *Action Travail des Femmes v. CN Railway*, that women workers were systematically discriminated against in gaining access to male "standard" employment. The Court found that ending such discrimination required an employment equity program to "create a climate in which both negative practices and negative attitudes can be challenged and discouraged" in order to break a continuing cycle of systemic discrimination". (Cornish, Faraday and Verma, 2001).

On the basis of these rulings and armed with evidence of the limitations of past complaint-based laws, women's groups in several provinces successfully demanded pro-active laws. Laws such as Ontario's *Pay Equity Act* and Ontario's *Employment Equity Act*, 1993 (now repealed) are seen as particularly effective because of the comprehensiveness of the model which combines legislative, collective bargaining, adjudicative and enforcement mechanisms to arrive at an effective equality result. This model is used in the Federal Government's proactive *Employment Equity Act*. Ironically, these decisions from Canadian courts directing a broad and systemic approach to establish a culture of equality have come at the same time as the governing political\economic climate seems to have little time for a broad and generous view of human rights obligations. As elsewhere in the world, in both private and public sector Canadian workplaces, the emphasis is on restructuring to downsize and cut costs. The Unions use of litigation as a strategy culminated in the 1997 *SEIU Local 204 et al v. AG (Ont)* decision which represented a significant equality breakthrough. It showed that the *Charter* could be used to prevent Governments from taking away hard fought for legal rights from disadvantaged groups. The Ontario Superior Court of Justice struck down *Schedule J* of the *Savings and Restructuring Act*, 1996, since it "created discrimination" in violation of section 15 : *Schedule J* in a budget cutting move had repealed the pay equity rights of over 100,000 women who worked in over 4,000 government-funded predominantly female workplaces such as nursing homes, daycare centers, social service and community agencies. While the Government did not appeal and eventually paid out approximately \$250 million in retroactive payments, the Government's decision despite a budget surplus not to flow any further pay equity funding to these workplaces led to a further *Charter* challenge being brought in 2001 by four women and five unions representing the women in these workplaces - *CUPE et al v AG(Ont) et al*. The *CUPE et al* case claims that government is perpetuating wage-based gender-discrimination by failing to fund the on-going pay equality adjustments owing to

these workers to redress the pay discrimination identified in their wages by plans negotiated by their unions under the *Act*. After nearly two years of litigation, the Government and the Unions are now in mediation in order to arrive at a settlement of the issues. See Annex 2 which cites many of the above-noted cases.

Promoting the Role of Unions

Proactive Canadian laws have generally identified an essential role for unions in the achievement of workplace equality. This role varies from a co-management role in *Pay Equity Act* where the unions jointly develop with the employer the equality measures and a consultative or collaborative role in the new Federal employment equity law. While unions have not always properly defended women's interests, overall Canadian unions have played a key role in working in coalitions with women's groups and using their collective bargaining power to push forward gender equality issues. This has included bargaining for equalization of rates for comparable male and female work, across the board rather than percentage wage increases and extra increases for lower paid workers. Legislation on equal pay helped unions push these claims. At the same time, the forces of the new economy have led to governments weakening bargaining laws to give employers more "flexibility". Ontario's Equal Pay Coalition recognized that unionization was one of the most effective ways of quickly and substantially increasing the wages of women workers. As unionization is particularly difficult in the non-standard jobs held by most women workers, the Coalition called for more accessible organizing laws.

Enforcement of International Obligations

Unions and women's organizations continue to lobby Canadian governments to comply with their *Charter* and international equality obligations. Canada's national gender plan recognizes that Canada's gender commitments are "an integral part of its policy toward the human development of its people and the sustainable development of the country". Canada's equality-seeking NGOs joined together in the Canadian Feminist Alliance for International Action ("FAFIA") after the 1995 Beijing conference to provide Canadian women with the tools and knowledge to hold Canadian governments accountable to the commitments made at Beijing and Beijing+5 and in instruments such as CEDAW. FAFIA's activities include: research and policy development, ongoing consultation and information exchange for and among NGOs, a dialogue with government and skills and capacity building through a training and mentoring program. When Canada presented its 5th periodic report to the UN Committee on the Elimination of Discrimination against Women under CEDAW's Article 18. FAFIA representing 45 NGOs filed its own Submission to the Committee responding to the Report and detailing the continuing inequalities facing Canadian women in violation of Canada's CEDAW commitments. The Committee issued a report criticizing Canada's performance. Complaints have also been made to the UN by a different group about the failure of Canada to properly enforce its human rights laws. The UN Committee recommended that Canada's human rights laws be amended so as to guarantee access to a competent tribunal and an effective remedy in all cases of discrimination.

Defending the State

Canadians recognize the value of the state and have a significant "social safety net" of laws in place. The cutbacks to the public sector by the "tax-cutting" and "public-sector" reducing governments of the 1990's adversely impacted Canadian women. Cutbacks on public sector jobs not only mean women lose some of their best jobs and access to services but this increases their time burden since women are left to do much of the necessary work without pay or training at home. This further limits their possibilities for pay and employment. (Cornish and Armstrong, 1996)

ANNEX 2 A LEGISLATIVE CHECKLIST FOR ACHIEVING PAY EQUALITY IN CANADA

The Checklist below identifies the requirements flowing from Canada's human rights obligations under international and domestic law that must inform the design of any new pay equity law.*

ENACTING LEGISLATION

The government must enact pay equity legislation.

Convention No. 165(a) and para. 178(a)

The new pay equity legislation must increase efforts to close the wage gap and must strengthen the ability to achieve pay equity in practice.

Beijing Platform for Action, para. 175(k)

EQUAL PAY FOR WORK OF EQUAL VALUE

THE LEGISLATION MUST ... guarantee the principle of equal pay for work of equal value.

ILO Convention No. 100, Article 1; *International Covenant on Economic, Social and Cultural Rights* ("ICESCR"), Article 7; CEDAW, Article 11; *Beijing Platform for Action*, paras. 165, 166, 175, 178

... impose a proactive obligation upon employers to achieve pay equity in their workplaces.

B.C. v. B.C.G.S.E.U. (*Re Meiorin*) (1999), 176 D.L.R. (4th) 1 (S.C.C.); *Beijing Platform for Action*, para. 178(a), (h), (l) and (o); *Beijing +5 Resolution*, para. 82(h)

... achieve substantive equality.

Andrews v. Law Society of British Columbia (1989), 56 D.L.R. (4th) 1 (S.C.C.)

RECOGNIZING THE IMPORTANCE OF PAY EQUITY AS A FUNDAMENTAL HUMAN RIGHT

... expressly recognize equal pay for work of equal value as a fundamental labour standard of the highest priority which is necessary for building a sustainable, just and developed society.

ILO Convention No. 100; ILO Declaration on Fundamental Principles and Rights at Work; CEDAW, Preamble; *Beijing Platform for Action*, para. 41

... expressly recognize that pay equity is a fundamental human right with quasi-constitutional status and provide that like other human rights statutes, the pay equity statute takes primacy over all laws save the Constitution.

Insurance Corporation of British Columbia v. Heerspink (1982), 137 D.L.R. (3d) 219 (S.C.C.)

SCOPE OF THE LEGISLATION'S APPLICATION

... impose a proactive obligation to achieve pay equity upon employers in both the public sector and the private sector.

CEDAW, Articles 2(d) and 2(e); *Beijing Platform for Action*, para. 178(a), (h), (l) and (o); and B.C. v. B.C.G.S.E.U. (*Re Meiorin*)

... contain special measures to ensure that public authorities and public institutions act in compliance with pay equity obligations.

CEDAW, Article 2(d)

METHODOLOGIES FOR ACHIEVING PAY EQUITY

... provide a remedy for systemic discrimination.

Action Travail des Femmes v. C.N.R. Ltd. (1987), 40 D.L.R. (4th) 193 (S.C.C.)

... break the cycle of systemic discrimination by providing a framework to challenge systemic assumptions and practices that lead to the undervaluing and under-compensating of women's work.

Action Travail des Femmes v. C.N.R. Ltd. (1987); and CEDAW, Preamble

... set out specific gender inclusive or gender neutral methodologies for evaluating and comparing the different jobs that men and women do and for reformulating wage structures of female-dominated jobs.

ILO, Convention No. 100, Article 3; *Report of the Committee on the Elimination of Discrimination against*

Women, para. 339; *Beijing Platform for Action*, para. 178(k) and 178(o); *B.C. v. B.C.G.S.E.U. (Re Meiorin)*; and *Federal Plan for Gender Equality*, para. 91-92

... ensure that unions have an active role in developing and enforcing pay equity.

Beijing Declaration, para. 20; *Beijing Platform for Action*, para. 166(l), para. 178(h); ILO Declaration on Fundamental Principles and Rights at Work; and *Federal Plan for Gender Equality*, para. 90

... guarantee protection for the most vulnerable workers by ensuring that methodologies for achieving pay equity provide reasonable opportunity for representatives/agents of non-unionized employees to participate in the process of developing and enforcing pay equity.

Beijing Platform for Action, para. 45

ENFORCEMENT OF PAY EQUITY RIGHTS

... guarantee pay equity rights by ensuring that complaints regarding pay equity will be enforced before a competent and expert tribunal.

International Covenant on Civil and Political Rights (ICCPR), Article 3; CEDAW, Article 2(c); *Report of the Committee on Human Rights*, para. 9

... provide an effective remedy for systemic wage discrimination.

(ICCPR) Article 3; *Report of the Committee on Human Rights*, para. 9

... impose meaningful sanctions for the failure to comply with pay equity obligations.

CEDAW, Article 2(b)

... ensure that competent authorities will enforce pay equity remedies when they are granted.
(ICCPR), Article 3.

... strengthen adjudicative mechanisms to adjudicate systemic wage discrimination.

Beijing Platform for Action, para. 178(l); and *Report of the Committee on Economic, Social and Cultural Rights*, para. 51

... guarantee that vulnerable workers will be provided with legal aid in order to enforce their pay equity claims.

Report of the Committee on Economic, Social and Cultural Rights, para. 51; *Promoting Equality: A New Vision 2000*; *Achieving Equality: Report of the Ontario Human Rights Code Review Task Force*

... include mechanism to ensure that pay equity will be achieved “without delay”.

CEDAW, Article 2

... include methodologies to evaluate progress in closing the wage gap.

Report of the Committee on the Elimination of Discrimination Against Women, para. 339

... ensure that past discriminatory practices will not re-emerge.

Action Travail des Femmes v. C.N.R. Ltd. (1987)

... include a mechanism by which employers must report to an external oversight body regarding their compliance with pay equity obligations.

... include a mechanism for external oversight and auditing of employers' compliance with pay equity.

ILO Convention No. 100; ICESCR, Articles 16 and 17; (ICCPR); CEDAW, Part V; *Beijing Platform*

... signal that government has made a strong commitment to achieving pay equity, that government has dedicated itself unreservedly to achieving pay equity, and that government has mobilized adequate resources to achieving pay equity.

Dunmore v. Ontario (Attorney General) 2001 SCC 94; CEDAW, Articles 2 and 24; ICESCR, Article 2; *Beijing Declaration*, para. 7; and *Beijing Platform for Action*, para. 4-5

... ensure the full and practical realization of the right to equal pay for work of equal value.

CEDAW, Articles 2 and 24; ICESCR, Articles 3 and 7; *Report of the Committee on Economic, Social and Cultural Rights*, para. 53.

* Checklist based on document prepared by author and Fay Faraday for the Pay Equity Review Task Force appointed by the Canadian government.

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